THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.25759 of 2005

Between:

1. State of Andhra Pradesh
rep. By its Spl. Chief Secretary to Govt.
Revenue Dept, Secretariat, Hyderabad
And 3 others .... Petitioners

And

T.Anantaram .... Respondent

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.25759 of 2005

JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by the order of the Tribunal, in O.A.1219 of 2005 with C.A.620 of 2005 and VMA 649 of 2005 in O.A.1219 of 2005 dated 28.4.2005, the present writ petition is filed.

The respondent – applicant, is governed by the A.P.C.S. (CC & A) Rules, 1991. While he was working as a Sub-Registrar at Kukatpally, officers of the Anti Corruption Bureau (ACB) visited his office on 5.11.2003, and verified the records and personal cash of the employees. A mediation report was prepared and, thereunder, the attender attached to the Sub-Registrar was found having cash in excess of the amount declared by him. The report mentions that Sri Salmonraj had given a complaint, to the A.C.B. authorities,

that the attender had demanded and accepted a bribe of Rs.500/-. When questioned, the attender denied the allegations stating that the complainant had himself offered Rs.500/- without any demand from him. The report also mentions that there were variations in cash, of Rs.120/-, with one of the Junior Assistants, relating to the fees collected for issuing encumbrance certificates and certified copies. A report was submitted by the ACB in the month of December, 2003. Thereafter, the government issued Memo dated 23.2.2005 directing the 2nd petitioner herein to place the respondent-applicant under suspension. In the memo dated 23.2.2005 the attention of the 2nd petitioner was drawn to the proceedings of the Director General, ACB dated 4.12.2003 and the letter of the A.P. Vigilance Commission dated 13.4.2004 and he was informed him that the competent authority had made a surprise check over the Sub-Registrar Office, Kukatpally and found certain irregularities against three employee including the respondent – applicant. The 2nd petitioner was requested to inform whether action under Rule 8(1)(a) of the APCS (CCA) Rules, 1991 for placing these individuals under suspension was taken and, if not, to place the three employees, including the respondent – applicant, under suspension immediately and to initiate major penalty proceedings against them. Copies, of the suspension orders of these employees, were asked to be furnished to the A.P. Vigilance Commission as well as the ACB under intimation to the government.

Consequent thereto, the 4th petitioner herein issued proceedings dated 17.3.2005, exercising powers conferred under sub-rule 1(a) of Rule 8 of A.P.C.S (CC & A) Rules, and placed the respondent – applicant under suspension from the date of communication of the order. The 4th petitioner ordered that the respondent – applicant shall be continued under suspension until conclusion of the disciplinary proceedings/termination of all proceedings relating to the criminal charges. While calling upon the respondent–applicant not to leave head quarters without prior permission the 4th petitioner informed him that he would be paid subsistence allowance as per the provisions of F.R. 53. Subsequently charges were framed, against the respondent– applicant, vide proceedings dated 11.8.2005 and an enquiry officer was appointed to inquire into the charges levelled against him.

Aggrieved by the order of the government, dated 23.2.2005, and the consequential proceedings of the 4th petitioner, dated 17.03.2005, the respondent – applicant filed O.A.1219 of 2005. The Tribunal passed an interim order on 28.4.2005 suspending the order of suspension dated 17.3.2005. The Tribunal relied on the judgment of the Supreme Court, in **Nagaraj Shivarao Karjagi v. Syndicate Bank**[1], to hold that an order of suspension could not be passed at the instance of higher authorities and the competent authority could not act at the dictates of the Vigilance Commission and that no third party, like the Vigilance Commission or the government, could direct the manner in which the disciplinary authority or the competent authority should exercise their powers or the nature of punishment that should impose on the delinquent officer. The Tribunal held that the impugned orders of suspension had been issued on the directions of the government which was a superior authority. The Tribunal noted that the government memo dated 23.2.2005 refers to the proceedings of the A.P. Vigilance Commission dated 13.4.2004 and held that no further development seems to have taken place, between 13.4.2004 and the memo of the 1st respondent dated 23.2.2005, on the basis of which, *prima facie*, the impugned order was issued. The Tribunal held that the order of suspension dated 17.3.2005 was liable to be suspended.

On a vacate petition being filed, in VMA 649 of 2005, the Tribunal held that the impugned order of suspension dated 17.3.2005 was issued on the recommendations of the 1st petitioner dated 23.2.2005 without application of mind to the facts and circumstances of the case and, in view of the laid down in **Nagaraj Shivarao Karjagi**[1], the order of suspension had been suspended. The Tribunal, while dismissing the VMA, made the interim order absolute. Aggrieved thereby the present writ petition.

Learned Government Pleader for Services – II would submit that, unlike in **Nagaraj Shivarao**

Karjagi[1], in the present case, Rule 15 of the A.P.C.S (CC & A) Rules, 1991 empowers the Government to direct the competent authority to place the employee under suspension. Learned Government Pleader would submit that, since the government had itself decided to place the respondent-applicant under suspension, it was entitled to pass the order of suspension either on its own or direct the 4th petitioner, who is also one of the competent authorities, to place the respondent-applicant under suspension. With regards the finding of the Tribunal, that the government had recommended that the respondent–applicant be placed under suspension only at the behest of the A.P. Vigilance Commission, Learned Government Pleader would submit that, while the A.P. Vigilance Commission had advised the government to place the respondent–applicant under suspension, the government had not blindly accepted/followed these recommendations but had independently exercised its mind and had come to the conclusion that it was necessary in public interest to place the respondent-applicant under suspension.

Sri J.R.Manohar Rao, learned counsel for the respondent – applicant, on the other hand, would submit that even after the recommendations of the Vigilance Commission that the respondent–applicant be placed under suspension, the government was of the view that he should be transferred to a non-focal post which would go to show that the government did not intend to place him under suspension and that it was only on the insistence of the A.P. Vigilance Commission that the respondent–applicant was placed under suspension. Learned counsel would submit that since the government had decided to transfer the respondent – applicant instead of placing him under suspension the order of the Tribunal did not call for interference.

Before examining the rival contentions it is necessary to note Rules 8 and 15 of the A.P.C.S.(CC & A) Rules, 1991:

"**Rule 8. Suspension**: (1) A member of a Service may be placed under suspension from service-

(a) where a disciplinary proceedings against him is contemplated or is pending or
(b) where in the opinion of the authority competent to place the Government servant under suspension, he has engaged himself in activities prejudicial to the interest of the security of the State , or
(c) where a case against him inn respect of any criminal offence is under investigation, inquiry or trial
(d) A member of a service may be placed under suspension from service even if the offence for which he was charged does not have bearing on the discharge of his official duties.

Rule 15: Power of appointing authority etc., to suspend members of State and Subordinate Services: - Notwithstanding anything in these rules, the appointing authority or any authority to which it is subordinate including the Government may also place under suspension under Rule 8, any member of a Service to whom these rules apply."

Under Rule 8(1)(a), a member of the service may be placed under suspension where disciplinary proceedings are either contemplated or are pending against him. Rule 15 has overriding effect over other rules, including Rule 8, and thereunder notwithstanding anything in the rules, the appointing authority or any other authority to which it is subordinate, including the government, may also place any member of a service, to whom these rules apply, under suspension. On a conjoint reading of Rules 8 and 15, the government is empowered to place a member of the service under suspension. It matters little, whether the government places a member of the service under suspension on its own or directs another competent authority to place such an employee under suspension.

In **Nagaraj Shivarao Karjagi**[1], the Apex Court observed:

"….. We are not even remotely impressed by the arguments of counsel for the Bank. Firstly, the Bank itself seems to have felt as alleged by the petitioner and not denied by the Bank in its counter that the compulsory retirement recommended by the Central Vigilance Commission was too harsh and excessive on the petitioner in view of his excellent performance and unblemished antecedent service. The Bank appears to have made two representations; one in 1986 and another in 1987 to the Central Vigilance Commission for taking a lenient view of the matter and to advice lesser punishment to the petitioner. Apparently, those representations were not accepted by the Commission. **The disciplinary authority and the appellate authority therefore have no choice in the matter. They had to impose the punishment of compulsory retirement as advised by the Central Vigilance Commission. The advice was binding on the authorities in view of the said directive of the Ministry of Finance, followed by two circulars issued by the successive Chief Executives of the Bank. The disciplinary and appellate authorities might not have referred to the directive of the Ministry of Finance or the Bank circulars. They might not have stated in their orders that they were bound by the punishment proposed by the Central Vigilance Commission. But it is reasonably foreseeable and needs no elaboration that they could not have ignored the advice of the Commission. They could not have imposed a lesser punishment without the concurrence of the Commission. Indeed. they could have ignored the advice of the Commission and imposed a lesser punishment only at their peril.**

……..The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. **The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer**. (See: De Smith's Judicial Review of Administrative Action,Fourth Edition, p. 309). The impugned directive of the Ministry of Finance is, therefore, wholly without jurisdirtion and plainly contrary to the statutoryRegulations governing disciplinary matters……." (emphasis supplied)

No rule, similar to Rule 15 of the A.P.C.S (CC & A) Rules, 1991, fell for consideration in **Nagaraj Shivarao Karjagi**[1]. Reliance placed on the said judgment by the Tribunal, to hold that the competent authority ought not to have passed the order of suspension at the behest of the government, is therefore misplaced. The order of suspension dated 17.3.2005 passed by the 4th petitioner, pursuant to the government memo dated 23.2.2005, cannot be faulted.

To examine the rival contentions, and in order to determine as to whether the government, in issuing the impugned proceedings dated 23.02.2005, had acted merely on the dictates of the A.P. Vigilance Commission or had independently exercised its mind to place the respondent – applicant under suspension, we called for the records of the government including the note file.

A perusal of the note file would show that in October, 2004 it was noted that a surprise check was conducted almost a year back on 5.11.2003, that the suspension of the respondent – applicant at this stage and at this distance of time may not stand legal scrutiny and would not serve any purpose, that instead the individual be posted to a non-focal post and that the A.P. Vigilance Commission may consider the circumstances and advise. Subsequent thereto the A.P. Vigilance Commission, in its letter dated 5.2.2005, had advised that the respondent – applicant be placed under suspension. In the relevant notings of March, 2005, it is noted that, in obedience to the advice of A.P. Vigilance Commission dated 5.2.2005, instructions were issued to the 4th petitioner, vide memo dated 23.02.2005, to place the respondent–applicant under suspension. It is clear from the note file that the government had directed the 4th petitioner to place the respondent–applicant under suspension based only on the advice of the A.P. Vigilance Commission.

In **D. Ramesh Sinha v. Cadre Authority, Hyderabad**[2], the Division Bench of this Court observed:-

"….Having regard to the aforementioned notings in the records, we have no doubt whatsoever that the impugned orders of suspension have been passed pursuant to an in furtherance of the direction issued by the State Government. Power to initiate disciplinary proceedings against an employee or place him under suspension emanates from a statute. While exercising such statutory owner, the competent authority, must therefore, apply its mind independently as to whether the conditions precedent for exercising such power exist. It is now trite that if a statutory authority acts at the behest of some other authority, however high he may be, who has no statutory role to play in the matter, then such action/or any order passed by him, would be non est in the eye of law. It is also well settled that while passing an order, if the statutory authority ignores the relevant factors or takes into considerations, factors, not germane for the passing of the order, then such action or the order flowing from such action, would be vitiated in law. Equally well settled is the principle that the statutory authority while exercising statutory powers, must pose correct questions so as to apply correct legal principles and arrive at correct conclusions basing on the actual and exact state of affairs, and if he fails to do so, the same would amount to misdirection in law. Although decisions on this score are galore, suffice it to refer to the decision of the Apex Court in Commissioner of Police v. Gordhandas (AIR 1952 SC 16) and the decision of the Court of Appeal, Civil Division in Secretary of State v. Tameside (1976) 3 ALL ER 665.

In the above view of the matter, we are of the opinion that the impugned orders of suspension cannot be sustained. Hence, the orders of the learned Single Judge dismissing the writ petitions are set aside. Consequently, the orders of suspension dated 10.2.2001, impugned in the writ petitions, also stand set aside. There cannot, however, be any doubt whatsoever that in the event the statutory authority intends to pass appropriate order afresh upon consideration of the materials on record, it would always be at liberty to do so. There also cannot be any doubt whosoever that before exercising such power, the statutory authority shall take into consideration all the relevant factors and apply its mind independent to the materials placed before it……." (emphasis supplied)

Since the government, in its memo dated 23.2.2005, had directed the 4th petitioner to place the respondent – applicant under suspension following the advice of the Vigilance Commission, and had not applied its mind independently to the facts and circumstances of the case, the impugned order of suspension dated 25.02.2005 and 17.03.2005 must be quashed.

The question, however, remains as to whether, consequent upon the orders of suspension being quashed, the respondent – applicant is required to be reinstated into service. Sri J.R.Manohar Rao, learned

Counsel for the petitioner would refer to the note file, wherein the government had endorsed that the respondent – applicant may be posted to a non-focal post, to contend that since the government had decided not to place the respondent-applicant under suspension, he should be reinstated into service leaving it open to the government, if it so chooses, to post him in a non-focal post. Recordings in the note file are in the nature of internal correspondence and ought not to be construed as decisions unless the said views in the note file crystallize into a decision and are communicated to the employee concerned. Since no such decision of the government has been communicated to the respondent-applicant, neither can reliance be placed on the views expressed in the note file nor can such notings be equated to a decision or an order of the government.

Even after the order of suspension is quashed the government, or any of the other competent authorities, are entitled to exercise their powers under Rules 8 and 15 of the A.P.C.S (CC &A) Rules, 1991 and pass appropriate orders afresh after applying their mind independently to the facts and circumstances of the case and the relevant material on record. Neither this Court, in exercise of its certiorari jurisdiction under Article 226 of the Constitution of India, nor the Tribunal, would sit in appeal over the decision of the competent authority in this regard or their wisdom in placing a member of a service under suspension, unless the order is vitiated by malice or is otherwise contrary to law. The jurisdiction exercised, by the High Court and the Administrative Tribunal, over such decisions is supervisory and not appellate. If the decision making process is found to be contrary to law, while the order is liable to be quashed, the competent authority cannot be precluded from taking action afresh in accordance with law. (**Managing Director ECIL Vs. Karunakar**[3]).

Since the impugned order of suspension dated 17.3.2005 and the earlier proceedings of the government dated 25.02.2005, are quashed, nothing survives for adjudication in O.A.1219 of 2005. It is made clear that neither the order passed in this writ petition nor the order of the Tribunal would preclude either the government or the 4th petitioner herein from applying their mind independently to the facts and circumstances of the case and take an independent decision, in accordance with law, as to whether or not the respondent – applicant is required to be placed under suspension.

The writ petition is allowed in part and is disposed of accordingly. However, in the circumstances, without costs.

_____

B.PRAKASH RAO,J

Date: -12-2006

_____

RAMESH RANGANATHAN,J

ASP/MRKR

---

[1] AIR 1991 SC 1507

[2] 2002 Suppl.(2) ALD 687 (DB)

[3] AIR 1994 SC 1074